

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant : Kevin J. Wagoner, et al.
 Appl. No. : 09/283,120
 Filed : March 31, 1999
 For : CONTINUOUS ONLINE
 AUCTION SYSTEM AND
 METHOD
 Examiner : Hani M. Kazimi
 Group Art Unit : 3624

CERTIFICATE OF MAILING

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

June 29, 2005

(Date)

Ted M. Cannon
 Ted M. Cannon, Reg. No. 55,036

APPLICANT'S APPEAL BRIEF

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in connection with an appeal to the Board of Patent Appeals and Interferences from the Final Rejection of the above-referenced Application as set forth in the Office Action mailed May 28, 2004. A check for \$* for filing this Brief is enclosed. Should any additional fees be necessary, please charge them to our Deposit Account No. 11-1410.

I. REAL PARTY-IN-INTEREST

The real party-in-interest in this appeal is the Assignee, Autobyte.com, Inc.

II. RELATED APPEALS AND INTERFERENCES

Applicants are unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

Claims 38-40, 53, and 54 are pending in this Application. Claims 1-37 and 41-52 have been withdrawn and are thus not at issue in this appeal. Claims 38-40 have been finally rejected. Because the Examiner did not finally reject Claims 53 and 54 but indicated that they would be

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allowable if rewritten in independent form, Claims 53 and 54 are not at issue in this appeal. In accordance with 37 C.F.R. § 1.192(c)(9), a copy of the claims involved in this appeal is included in the Appendix attached hereto.

IV. STATUS OF AMENDMENTS

Applicants filed an amendment on July 28, 2004, subsequent to the Final Office Action. In this amendment, Applicants canceled all of the claims rejected by the Examiner and rewrote Claims 53 and 54 in independent form. The Examiner had indicated in the Final Office Action that Claims 53 and 54 would be allowable if rewritten in independent form. Because Claim 53 was a multiple-dependent claim, the Applicants added new Claims 55 and 56 in order to retain the scope of Claims 53 and 54.

The Examiner did not enter the July 28, 2004 amendment. Instead, the Examiner mailed an Advisory Action on October 12, 2004 stating that the July 28, 2004 amendment did not place the application in condition for allowance. Applicants filed a Request for Reconsideration of this Advisory Action on November 12, 2004. The Examiner has not responded to the Request for Reconsideration. Because Applicants' July 28, 2004 amendment has not been entered, the claims at issue in this appeal are Claims 38-40 as they stood at the time of the May 28, 2004 Final Office Action.

V. SUMMARY OF THE INVENTION

The following paragraph summarizes the invention of Claims 38-40 only and does not limit other inventions that may later be claimed in the present application or in one or more continuation or divisional applications.

The invention of Claims 38-40 is an improvement of conventional computerized bidding systems. Such bidding systems conventionally have accepted a single bid value from each bidder. Some such systems have employed "proxy" bidding, in which the single bid entered by the bidder is a "maximum" bid. Conventional "proxy" bidding systems have automatically bid on behalf of the bidder, gradually incrementing the bidder's bid up to the maximum bid entered by the bidder.

In contrast to such single bid bidding systems, the invention of Claims 38-40 allows each bidder to enter a bid that includes two bid values instead of just one bid value. Allowing a bidder to enter two bid values instead of just one increases the bidder's flexibility and control over the

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bidding process. The fact that the invention of Claims 38-40 allows the user to enter two bid values instead of just one with each bid is captured in the following limitation that a "first bid data includes a **first bid and a second bid**, said first bid is greater than said current high bid value, and said second bid is greater than said first bid." Claim 38 (emphasis added).

VI. ISSUES PRESENTED ON APPEAL

This appeal presents the issue as to whether the Examiner erred by concluding that United States Patent No. 5,835,986 to Fisher et al. teaches a bidding system in which each bidder can enter two bid values with each bid. If the Fisher patent teaches a bidding system in which each bidder can enter only one bid value with each bid, then the Examiner improperly rejected Claims 38-40 under 35 U.S.C. § 102(e) and such anticipation rejections should be reversed.

VII. GROUPING OF THE CLAIMS

The Examiner has organized Claims 38-40 into a single group. The Examiner rejected Claims 38-40 as anticipated under 35 U.S.C. § 102(e) by United States Patent No. 5,835,986 to Fisher et al.

According to 37 C.F.R. § 1.192(c)(7), the Board of Patent Appeals and Interferences may "select a single claim" from each group and analyze the rejection for that group "on the basis of that claim alone" unless the applicant asserts that "the claims of the group do not stand or fall together" and the applicant explains why the individual claims of the group are separately patentable.¹

Applicants believe that Claims 38-40 do not stand or fall together; rather, each claim presents distinct issues concerning patentability. However, Applicants have decided not to present arguments as to the independent ground of patentability for each claim because this would unnecessarily complicate the issues on appeal. Thus, in accordance with the requirements of the C.F.R. and the M.P.E.P., Applicants will maintain the grouping set forth by the Examiner, but only for purposes of this appeal, and only with respect to the specific grounds of rejection raised by the Examiner in connection with the Fisher et al. patent. This grouping is not intended to be, and should not be construed as, an admission or concession that the grouped claims are not patentably distinct. Applicants expressly reserve the right to assert in later proceedings the

¹ See also M.P.E.P. § 1206.

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independent patentability of each claim over the prior art of record on this appeal and/or any other prior art.

VIII. ARGUMENT

The Examiner rejected Claims 38-40 as being anticipated under 35 U.S.C. § 102(e) by United States Patent No. 5,835,896 to Fisher et al. In order to anticipate the claimed invention, the Fisher patent must teach every limitation of the claimed invention. The Examiner has not met his burden to show that the Fisher patent teaches every limitation of the claimed invention. Specifically, the Examiner has not shown that the Fisher patent teaches the limitation that a "first bid data includes a **first bid and a second bid**, said first bid is greater than said current high bid value, and said second bid is greater than said first bid." Claim 38 (emphasis added).

This limitation that a "first bid data includes a first bid and a second bid" means that the claimed invention is a bidding system in which each user is allowed to enter two bid values, not just one, with each bid. The Fisher patent, on the other hand, teaches a form of computerized proxy bidding in which a computer user may enter a maximum bid that he or she is willing to pay for a product being auctioned. The Fisher system maintains a system minimum bid, which is the lowest bid that a user may enter. The computer enters bids on behalf of each user, but only up to the maximum value that the user is willing to pay. Using the Fisher system, a user may enter **just one bid value**, representing the maximum value that the user is willing to pay.

Specifically, Figure 3 of the Fisher system illustrates a form upon which a user enters his or her bid. Fisher patent, Figure 3. The form has only one field for accepting a bid value from a user. *Id.* That one field is labeled "Bid (price not to exceed)" on Figure 3. *Id.* Further, the label on Figure 3 that says "Minimum Bid: \$1.00" is not a bid entered by a user. Rather, this label is an informational field that simply informs the user of the minimum bid that the Fisher system will accept. Further, even the paragraph of the specification cited by the Examiner, Column 9, lines 17 et seq. teaches the entry of a single bid value, stating that:

a proxy bid is a special bid type that allows auction manager 26 to **automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed. The auction manager will increase the bid as necessary up to the limit amount.** This feature allows the customer to get

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the lowest possible price without exceeding a limit preferably established when the bid is entered.

Fisher patent, Col. 17: 19-25 (emphasis added). Far from teaching a system in which the user enters two bid values with each bid, the foregoing paragraph teaches a system in which the user enters only a maximum bid value and the system, not the user, automatically places intermediate bids on the user's behalf.

Accordingly, the Examiner did not show that the Fisher patent teaches every limitation of Claims 38-40. Specifically, the Examiner did not show that the Fisher patent teaches an auction system in which a user enters in a single "bid data" both "a first bid and a second bid, said first bid is greater than said current high bid value, and said second bid is greater than said first bid."

Because the Fisher patent does not teach every limitation of Claims 38-40, the Examiner improperly rejected Claims 38-40 as anticipated by the Fisher patent.

IX. CONCLUSION

Nothing in the prior art, individually or in combination, discloses, teaches, or suggests the invention recited by the claims on appeal. Accordingly, Applicants respectfully request that the Examiner's rejections be reversed and that Claims 38-40 be passed to issuance. Applicants note that while Claims 53 and 54 are not at issue in this appeal because they have not been finally rejected, Claims 53 and 54 depend from Claims 38-40 and therefore should also be passed to issuance upon reversal of the Examiner's rejections of Claims 38-40.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6/29/2005

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APPENDIX: Claims at Issue in this Appeal

38. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:

a current high bid value for a first product;

a first bid data for said first product, said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid value, and said second bid is greater than said first bid;

a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid value, and said fourth bid is greater than said third bid; and

a bid processing module which calculates and updates said current high bid for said first product.

39. The auction system as defined in Claim 38, wherein said bid processing module further comprises:

a first calculation mode which calculates said high bid for said first product when said product auction system is in a first state; and

a second calculation mode which calculates said high bid for said first product when said product auction system is in a second state.

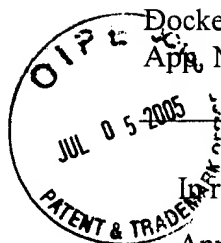
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40. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:

a current high bid for a first product, said current high bid is associated with a first bid data wherein said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid, and said second bid is greater than said first bid; and

a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid, and said fourth bid is greater than said third bid.

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Ted M. Cannon, Reg. No. 55,036

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Transmitted herewith in triplicate is Applicant's Appeal Brief to the Board of Patent Appeals:

FEE CALCULATION				
FEE TYPE		FEE CODE	CALCULATION	TOTAL
Appeal Brief	41.20(b)(2)	1402 (\$500)		\$ 500
5 Month Extension	1.17(a)(5)	1255 (\$2,160)		\$2,160
			TOTAL FEE DUE	\$2,660

- (X) A check in the amount of \$2,660 to cover the foregoing fees is enclosed.
- (X) If applicant has not requested a sufficient extension of time and/or has not paid any other fee in a sufficient amount to prevent the abandonment of this application, please consider this as a Request for an Extension for the required time period and/or authorization to charge our Deposit Account No. 11-1410 for any fee which may be due. Please credit any overpayment to Deposit Account No. 11-1410.
- (X) Return prepaid postcard.

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